

UNITED STATES OF AMERICA)
)
v.) No. 2:19-CR-145-JRG-CRW-2
)
LUIS DANIEL MARTINEZ PATINO)

This matter is before the court on Defendant Luis Daniel Martinez Patino's Motion to Reduce Sentence under Amendment 821 to Appendix C of the *United States Sentencing Commission Guidelines Manual*. [Doc. 571]. The Federal Defender Services of Eastern Tennessee has filed a Notice of No Intention to File a Supplemental Motion [Doc. 573]. The United States filed a Response in Opposition [Doc. 574]. For the reasons herein, the Court will deny Mr. Patino's motion.

In 2020, Mr. Patino pled guilty to one count of conspiracy to distribute 50 grams or more of methamphetamine in violation of 21 U.S.C. §§ 846, 841(a)(1), 841(b)(1)(A) [Plea Agreement, Doc. 172, at 1]. At sentencing, Mr. Patino had a criminal history category of IV and a total offense level of 29, resulting in a sentencing guidelines range of 121-151 months [Presentence Investigation Report, Doc. 254, at 20]. He was sentenced to a total of 140 month's imprisonment and a 5-year term of supervised release [Judgment, Doc. 288, at 2-3].

Mr. Patino now moves the Court to reduce his sentence under 18 U.S.C. § 3582(c)(2) and Amendment 821. The United States opposes his motion. Having carefully reviewed the parties' arguments, the Court is prepared to rule on Mr. Patino's motion.

II. LEGAL STANDARD

“Federal courts are forbidden, as a general matter, to ‘modify a term of imprisonment once it has been imposed,’ but the rule of finality is subject to a few narrow exceptions.” *Freeman v. United States*, 564 U.S. 522, 526 (2011) (internal quotation omitted). Congress enacted one of those exceptions in 18 U.S.C. § 3582(c)(2), which states:

[I]n the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

In short, a defendant will be eligible for a reduction under § 3582(c)(2) if he satisfies two requirements. *See United States v. McClain*, 691 F.3d 774, 777 (6th Cir. 2012) (stating that the defendant “must show” that he is entitled to a sentence reduction under § 3582(c)(2)).

First, the defendant must have “been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission.” *United States v. Taylor*, 815 F.3d 248, 250 (6th Cir. 2016) (quoting 18 U.S.C. § 3582(c)(2));¹ *see* U.S. Sent’g Guidelines Manual § 1B1.10(a)(1) cmt. n.1(A) (“Eligibility for consideration under 18 U.S.C. § 3582(c)(2) is triggered only by an amendment . . . that lowers the applicable guideline range[.]”).² In determining whether a defendant was sentenced “based on a sentencing range

¹ This is so because Congress has “charge[ed] the Commission both with deciding whether to amend the Guidelines and with determining whether and to what extent an amendment will be retroactive.” *Dillon v. United States*, 560 U.S. 817, 826–27 (2010) (footnote committed) (citing 28 U.S.C. § 994(o), (u))).

² “[C]ommentary in the Guidelines Manual that interprets or explains a guideline is authoritative unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous reading of, that guideline.”

that has subsequently been lowered by the Sentencing Commission,” 18 U.S.C. § 3582(c)(2), the Court identifies the amended guidelines range—that is, the guidelines range that would have applied to the defendant if the applicable amendment had been in effect during sentencing—and substitutes this guidelines range for the original guidelines range. *Dillon v. United States*, 560 U.S. 817, 827 (2010); U.S. Sent’g Guidelines Manual § 1B1.10(b)(1).

Second, a reduction must be “consistent with applicable policy statements issued by the Sentencing Commission.” *Taylor*, 815 F.3d at 250 (quoting 18 U.S.C. § 3582(c)(2)). USSG § 1B1.10 contains the Sentencing Commission’s policy statements. *See* U.S. Sent’g Guidelines Manual § 1B1.10(a)(1) (providing that a reduction “shall be consistent with this policy statement”). A reduction is consistent with USSG § 1B1.10 when the amendment at issue (1) applies to the defendant and (2) lowers the defendant’s guidelines range. *Id.* § 1B1.10(a)(2)(A)–(B).

Lastly, the Court must consider any applicable factors under 18 U.S.C. § 3553(a), as well as public-safety factors, when determining—in its discretion—whether a reduction “is warranted in whole or in part under the particular circumstances of the case.” *Dillon*, 560 U.S. at 827; *see United States v. Curry*, 606 F.3d 323, 330 (6th Cir. 2010) (“[T]he district court *may* reduce a previously imposed sentence if [the] statutory requirements . . . are met. Section 3582 does not create a *right* to a reduced sentence, however.” (citing U.S. Sent’g Guidelines Manual § 1B1.10 cmt. background)); U.S. Sent’g Guidelines Manual § 1B1.10 cmt. n.1(B)(i) (stating that courts “shall consider the factors set forth in 18 U.S.C. § 3553(a)”); U.S. Sent’g Guidelines Manual § 1B1.10 cmt. n.1(B)(ii)–(iii) (providing that courts “shall consider the nature and seriousness of

United States v. Douglas, 634 F.3d 852, 862 (6th Cir. 2011) (alteration in original) (footnote omitted) (quoting *Stinson v. United States*, 508 U.S. 36, 38 (1993))).

the danger to any person or the community that may be posed by a reduction in the defendant's term of imprisonment" and "may consider post-sentencing conduct of the defendant").

III. ANALYSIS

In 2023, the Sentencing Commission submitted to Congress a multi-part amendment to the guidelines' criminal history rules: Amendment 821 in Appendix C to the *Guidelines Manual*. The Sentencing Commission gave retroactive effect to two parts of that amendment: Part A and Part B, Subpart 1. *See* U.S. Sent'g Guidelines Manual § 1B1.10(d); U.S. Sent'g Guidelines Suppl. to app. C, amend. 825. Part A of Amendment 821 addresses "status points" under USSG § 4A1.1. Status points are the criminal history points that apply to defendants who have committed their underlying federal offense while serving a prior criminal sentence—most often probation, parole, or supervised release. Specifically, Part A decreases status points from two points to one point for defendants with seven or more criminal history points and eliminates status points for defendants with six or fewer criminal history points. As amended by Amendment 821, § 4A1.1 in Chapter Four of the *Guidelines Manual* now reads:

The total points from subsections (a) through (e) determine the criminal history category in the Sentencing Table in Chapter Five, Part A.

(a) Add 3 points for each prior sentence of imprisonment exceeding one year and one month.

(b) Add 2 points for each prior sentence of imprisonment of at least sixty days not counted in (a).

(c) Add 1 point for each prior sentence not counted in (a) or (b), up to a total of 4 points for this subsection.

(d) Add 1 point for each prior sentence resulting from a conviction of a crime of violence that did not receive any points under (a), (b), or (c) above because such sentence was treated as a single sentence, up to a total of 3 points for this subsection.

(e) Add 1 point if the defendant (1) receives 7 or more points under subsections (a) through (d), and (2) committed the instant offense while under any criminal justice

sentence, including probation, parole, supervised release, imprisonment, work release, or escape status.

U.S. Sent'g Guidelines Manual § 4A1.1.

In Part B, Subpart 1 of Amendment 821, the Sentencing Commission created a brand-new guideline: USSG § 4C1.1 in Chapter Four of the *Guidelines Manual*, in which it instituted a decrease of two offense levels for “Zero-Point Offenders” (i.e., offenders with no criminal history points) whose offense did not involve certain aggravating factors. To receive this two- level adjustment, a zero-point offender must “meet [] all of the following criteria”:

- (1) the defendant did not receive any criminal history points from Chapter Four, Part A;
- (2) the defendant did not receive an adjustment under § 3A1.4 (Terrorism);
- (3) the defendant did not use violence or credible threats of violence in connection with the offense;
- (4) the offense did not result in death or serious bodily injury;
- (5) the instant offense of conviction is not a sex offense;
- (6) the defendant did not personally cause substantial financial hardship;
- (7) the defendant did not possess, receive, purchase, transport, transfer, sell, or otherwise dispose of a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;
- (8) the instant offense of conviction is not covered by § 2H1.1 (Offenses Involving Individual Rights);
- (9) the defendant did not receive an adjustment under § 3A1.1 (Hate Crime Motivation or Vulnerable Victim) or § 3A1.5 (Serious Human Rights Offense); and
- (10) the defendant did not receive an adjustment under § 3B1.1 (Aggravating Role) and was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. 848;

decrease the offense level determined under Chapters Two and Three by 2 levels.

Id. § 4C1.1.

Mr. Patino seeks relief under Part A and B of Amendment 821. [Def. Mot., Doc. 571]. In response, the United States argues that Mr. Patino is ineligible for a sentence reduction because Amendment 821 does not lower his guidelines range. [United States's Resp., Doc. 574, at 2]. The United States is correct.

At sentencing, Mr. Patino received seven or more criminal history points, nine in total. Two of the nine points were status points under §4A1.1(d), as he was under a State criminal justice sentence at the time of the instant offense [Presentence Investigation Report, Doc. 254, at 15]. Under Part A, he is now entitled to a one-status-point deduction, resulting in eight criminal history points. Eight criminal history points still places Mr. Patino in the same criminal history category of IV. A criminal history category of IV and offense level of 29 results in a guidelines range of 121-151 months, the same guidelines range applied to him at sentencing.

Because his guidelines range remains unchanged, Mr. Patino is not eligible for relief under Part A of Amendment 821. Part B of Amendment 821 does not avail Mr. Patino, either. He received nine criminal history points at sentencing, meaning he is not a zero-point offender and is not eligible for relief under Part B. Thus, Mr. Patino is not entitled to sentence reduction under Amendment 821.

IV. CONCLUSION

Mr. Patino fails to show that he is entitled to a sentence reduction under § 3582(c)(2) or Amendment 821, and his motion is therefore **DENIED**.

So ordered.

ENTER:

s/ J. RONNIE GREER

UNITED STATES DISTRICT JUDGE

